(21)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 960 of 2005

Appellant Rewa Prasad Kumhar S/O Late Chhakkolal Kumhar Aged 30 year, R/O Patharri, P.S. Marwahi, Distt. Bilaspur (C.G.)

VERSUS

Respondent State of Chhattisgarh through P.S. Marwahi, Distt. Bilaspur (C.G.)

Present:

Ms. Nirupma Bajpai, counsel for the appellant.
Mrs. Madhunisha Singh, P.L. for the State.

ORAL JUDGMENT

(23rd November 2007)

Dhirendra Mishra, J

This criminal appeal is directed against the judgment of conviction and order of sentence dated 11.11.2005 passed in S.T.No. 286/04 whereby learned Additional Sessions Judge, (FTC), Pendra Road, has convicted the appellant under Section 304-II of the IPC and sentenced him to undergo RI for 5 years, pay a fine of Rs.5,000/- and in default of payment of fine to undergo additional RI for six months.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

2. Case of the prosecution, in brief, is that complainant Nachkaiya Kumhar had married his daughter Jaimatiyabai with one Chhakkelal and his daughter and son-in-law were residing in his house after marriage. The appellant suspected that his mother has ousted his wife after quarrelling and on this account on 27.6.2004 about 10.00 O'clock the appellant started abusing complainant Nachkaiya, his mother Jaimatiya, son Shivkumar and went towards the house of complainant. He had attempted to throw stone at the complainant, however, he saved himself by entering into the house and closing the door. Thereafter, the appellant started abusing Shivkumar and also beat him. At that time when Jaimatiyabai was returning from the kitchen garden side, appellant picked up a fire wood from his house, assaulted twice on the back of her head, as a result of which blood started oozing from her head. She was taken to the hospital by the villagers. First Information Report of Ex.P/8 was lodged by complainant Nachkaiya, on the basis of which offence under Section 307 of the IPC was registered against the appellant. Medical examination report of Jaimatiyabai is Ex.P/10. However, deceased died on 28.6.2004 at 12.20 p.m. in Community Health Center, Marwahi while undergoing treatment. Information about her death was given vide Merg intimation of Ex.P/13 by Sadhelal Patle. Inquest over the person of the deceased was prepared vide Ex.P/7. Thereafter, dead body was sent for postmortem

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

examination to Community Health Center, Marwahi where Dr. Bhagwan Singh Paikra (PW-9) conducted postmortem and gave his report of Ex.P/11. After completing investigation charge sheet was filed against the appellant under Section 302 of the IPC.

3. During trial 12 witnesses were examined by the prosecution. Thereafter, statement of the accused was recorded in which he denied the evidence appearing against him in the prosecution case and pleaded innocence and false implication in the above offence. However, learned trial Court after hearing counsel for the respective parties acquitted the appellant of the charge under Section 302 of IPC and convicted and sentenced the appellant as mentioned above.

4. Learned counsel for the appellant submits that conviction of the appellant is based on the statement of eyewitness Ratanlal who claims to have seen the incident from a distance of 200 ft. The cause of death as opined by Dr. Bhagwan Singh Paikre (PW-9), who conducted postmortem, is due to coma as a result of injury sustained by the deceased on her head. However, he has admitted that the injuries No. 1, 2 & 3 described in the postmortem report could be caused by falling.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

5. On the other hand, learned counsel appearing for the State/respondent supported the impugned judgment of the trial Court.

6. I have heard learned counsel for the parties and perused the material available on record including the impugned judgment.

7. From the evidence of Ratanlal (PW-6), who has seen the appellant assaulting his mother Jaimatiyabai with fire wood and the postmortem report of Ex.P/11 proved by Dr. Bhagwan Singh (PW-9), in which it has been mentioned that the deceased sustained lacerated wound on the occipital region in the size of 3 x 5 cm bone deep and on dissection there was fracture in the skull, there was another lacerated wound of size 2 x 5 cm bone deep extending up to occipito vertex region (above ear) on the left side with a fracture of bone and third wound on extra dura hemorrhage on the occipital region, blood clotting of size 5 x 5 cm below duramatar, the homicidal death of deceased Jaimatiyabai is established.

8. Now coming to the question of involvement of the appellant in crime in question. PW-6 Ratanlal, who is neighbour of the deceased and the appellant, has deposed that on the date of incident he was preparing to take bath in the well situated in his *badi* (kitchen garden). At that time he saw the accused assaulting

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his mother on her back and thereafter on her head with lathi. After assaulting he fled from the place of incident. However, he did not go to there. In cross-examination, he has admitted that he saw the above incident from a distance of 200 ft. but he has categorically stated that the place of incident was visible from the place where he was standing. Some omissions in respect of mediation by him from his diary statement is pointed out in paragraph 4 of his cross-examination, however, he has stuck to his claim that he had seen the appellant assaulting the deceased on her head with club. He has denied the suggestion that he is making false allegations because he happens to be neighbour of the deceased.

9. PW-5 Shivkumar, son of the appellant, has also stated that on the date of incident his father came and started abusing him, at that time Shukla Prasad and Nachkaiya were also present there and the appellant abusing them entered into his home. He also followed the appellant, whereupon the appellant chased him for beating. After some time he heard the shouts, whereupon he went and saw that his grand-mother was assaulted by his father with a club. He does not know as to why his father assaulted his grand-mother. When he reached the spot, he saw his grand-mother lying on the ground with injuries over her back and behind the head. He has further stated that when he reached there, the accused entered the house and closed the door. However, in cross-

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 6	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

examination he has admitted the suggestion that the appellant did not assault his grand-mother in his presence. In paragraph 7 he has further stated that they all wanted that his father should be punished so that he is reformed. His father did not do any work and on the contrary, he used to commit *marpeet*.

10. Complainant Nachkaiya has not supported case of the prosecution and he has turned hostile.

11. PW-4 Shukla Prasad has also stated that on the date of incident he saw the accused abusing his son Shivkumar. However, thereafter he went to the field and he does not know as to who assaulted mother of the accused as the quarrel did not took place in his presence. He has stated that at that time Shivkumar told him that his father has assaulted his own mother. PW-3 Laxmi Prasad has also stated that the accused is his brother as he is son of his aunty and he heard the shouts of Shivkumar and on hearing the shouts of Shivkumar he came out and by that time the accused had come to the lane after assaulting his mother. At that time mother of the accused was lying in the kitchen garden and son of the accused had informed that the accused assaulted his own mother and he was abusing them by using filthy language.

12. The trial Court acquitted the appellant of the charge under Section 302 of IPC with an observation that the appellant did not

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	have any intention to cause death of his mother as he committed the above act out of sudden provocation as he considered that she was responsible for sending his wife away from him and there was no motive for causing her death. 13. Thus, from the evidence available on record, the prosecution has been able to establish involvement of the accused/appellant in causing homicidal death of his mother. There is no illegality or infirmity in the impugned judgment of the trial Court. 14. In the result, the appeal being devoid of substance is liable to be dismissed and is accordingly, dismissed. **Sd/-** **Dhirendra Mishra** **Judge**	

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